ness with the first appellant though the appellant was managing the business for him. Accordingly, I dismiss the appeal of both appellants.

*Appeal dismissed.*

Solicitors: *Reddy & Co.*

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## JAFRI AMIN & ORS. v. PERSATUAN AUTOMOBIL MALAYSIA

**[O.C.J. (Ajaib Singh J.) June 9, 1987]**

**[Kuala Lumpur – Originating Summons P 31-16-86]**

*Unincorporated Associations – Race Officials Club – Officials at motor race meetings – Application to be officials – Approval not given by Persatuan Automobil Malaysia (Automobile Association of Malaysia) – Whether Automobile Association of Malaysia exercises judicial or quasi-judicial function – Whether discretion properly exercised – Whether there is malice, bias, etc.*

*Civil Procedure – Specific Relief Act 1950, s. 41 – Application under.*

*Administrative Law – Whether National Competition Rules imply duty on Automobile Association of Malaysia to observe natural justice.*

The respondent, Persatuan Automobil Malaysia, is the Automobile Association of Malaysia (AAM). The AAM has the sole right to control automobile competitions throughout the country and is recognised internationally. The AAM has also drawn up the National Competition Rules (the Rules) to govern all motor sport competitions organised in Malaysia.

The four applicants were members of the Race Officials Club (ROC) of Selangor and the Federal Territory. ROC is recognized by AAM as a club under the Rules. The four applicants applied to be officials at certain motor race meetings. The AAM, for certain reasons, refused to give its approval as required under the Rules. In the present suit, the four applicants sought damages from AAM and certain declarations. They contended that AAM acted *mala fides*, with malice and had failed to exercise its discretion judicially. It was also contended that AAM was biased, prejudiced, vindictive, had acted *ultra vires* the Rules and in making its decisions had failed to observe the principles of natural justice. The application was made under section 41 of the Specific Relief Act 1950.

**Held**, dismissing the application: (1) the present application cannot be founded under section 41 of the Specific Relief Act. It was wholly misconceived. The ROC and the applicants were in no way entitled to any legal character or to any right as to any property as envisaged in section 41;

(2) the AAM does not exercise a judicial or quasi-judicial function under the Rules. The function of the AAM was purely administrative;

(3) there is nothing in the wording of the Rules by which the court can imply a duty on the part of the AAM to observe the principles of natural justice when the AAM made its decisions under the Rules. The AAM has absolute and unfettered powers under the respective Rules to decide on applications by promoters to hold motor race meetings and to decide whether or not to approve the nominations of officials at race meetings. There is also no place for the application of the principles of natural justice and the AAM is also not obliged to give any reason for its decisions which it may make under the Rules. The AAM was perfectly entitled to withhold its approval under the Rules for any reason whatsoever, not least of which may well be that some particular promoter or official was no longer in the good books of the AAM;

(4) there was insufficient evidence to find that the AAM was biased, prejudiced or had acted *mala fides* against the applicants;

(5) the decisions which the AAM made in this case were within the scope of the Rules and they cannot be challenged in a court of law.

[*Editorial Note:* The appeal to the Supreme Court in this case (Supreme Court Civil Appeal No. 359 of 1986) was withdrawn on January 4, 1988.]

*Case referred to:*

(1) *Ridge* v. *Baldwin* [1964] A.C. 40 at 85.

CIVIL SUIT.

*R. K. Nathan* for the applicants.
*S. S. Muker* for the respondents.

*Cur. Adv. Vult.*

**Ajaib Singh J.**: The four applicants in this case are members of the Race Officials Club (ROC) of Selangor and the Federal Territory and at the time of making this application they held office in the ROC as secretary, president, vice-president and treasurer respectively.

The respondent – the Automobile Association of Malaysia (AAM) – has the sole right to control automobile competitions throughout the country and it is recognised by the Federation Internationale de L'Automobile (FIA) which is the sole international authority to make and enforce rules and regulations for the encouragement and control of automobile competitions. As provided for by the International Sporting Code of the FIA, the AAM has drawn up the National Competition Rules to govern all motor sport competitions organised in Malaysia.

Under rule 54 of the National Competition Rules, automobile competitions may be organised in Malaysia only by the AAM and clubs or other promoters approved by the AAM. It is further provided in rule 63 that:

"No competition shall be held unless the AAM has signified its approval by granting an organising permit ... The AAM may attach conditions to the grant of a permit or decline to grant or may withdraw a permit without stating a reason."

An application for an organising permit has to be made out on an official form accompanied by the appropriate fee together with a draft of the proposed supplementary regulations. Details of the competition are required to be laid down in these supplementary regulations. The promoters have also to nominate officials for the race meetings. The nomination of these officials is, however, subject to approval by the AAM under rule 151 of the National Competition Rules which reads as follows:

"One or more of the stewards of the meeting may be nominated by the AAM. All officials other than any stewards of the meeting nominated by the AAM shall be nominated by the promoters subject to approval by the AAM."

The ROC is recognised by the AAM as a club under the National Competition Rules. Its principal officers – the applicants in this case – have in the past been nominated and have participated as officials duly approved by the AAM in various motor race meetings sponsored by commercial firms and organised through the Shah Alam Motor Racing Association (SAMRA) which is affiliated and recognised by the AAM under the National Competition Rules. But on February 5, 1986 when SAMRA submitted supplementary regulations to the AAM to hold the Malaysian Grand Prix 1986 over two days in early April, the AAM refused to give its approval to the names of the four applicants who had been nominated to act as officials at the Grand Prix. In the supplementary regulations, SAMRA had nominated 21 persons including the applicants as officials but in its letter dated March 8, 1986 to SAMRA the AAM did not give its approval to the four applicants by saying that it deemed the four as unsuitable to be officials at this race meeting. Four deputies of the ROC who were nominated together with the four applicants were, however, approved.

Then the Johore Grand Prix 1986 was being organised to be held on April 12 and 13, 1986. The promoter this time was the ROC itself. The supplementary regulations were duly submitted on March 5, 1986 to the AAM for approval and in these regulations the first applicant was nominated to act as one of the officials at the race meeting. The AAM did not give its approval for this race meeting and informed the ROC accordingly by letter dated March 10, 1986. The supplementary regulations were returned to the ROC.

The applicants contend that in rejecting them as officials in the Malaysia Grand Prix 1986 and in not approving the Johore Grand Prix 1986 the AAM had, without giving any reasons for its decisions, acted *mala fides*, with malice and had failed to exercise its discretion judicially. It was also contended that the AAM was biased, prejudiced, vindictive, had acted *ultra vires* the National Competition Rules and in making its decisions had failed to observe the principles of natural justice. Hence the applicants seek damages from the AAM and the following declarations:

(a) A declaration that the decision made by the Persatuan Automobil Malaysia Committee in their letter dated March 8, 1986 that the names of the four applicants abovenamed are unsuitable/unacceptable to be officials of the Malaysia Grand Prix 1986 has been made *mala fides* and is null and void.

(b) A declaration that the discretion exercised by the Persatuan Automobil Malaysia Committee in their letter dated March 8, 1986 that the names of the four applicants abovenamed are unsuitable/unacceptable as nominees for officials of the Malaysian Grand Prix 1986 was made contrary to the rules of natural justice and to the spirit of the National Competition Rules and was exercised with prejudice, bias and malice and that the Persatuan Automobil Malaysia Committee has not exercised its discretion judicially.

(c) A declaration that the discretion exercised by the Persatuan Automobil Malaysia Committee in refusing to approve the supplementary regulations for the Johore Grand Prix 1986 by their letter dated March 10, 1986 without giving any reasons thereof and the purported effect to reject officials of the Race Officials Club from being nominated or participating as officials for further race meets is *ultra vires* the powers of the AAM Committee and is null and void and was made prejudicially to the detriment of the four applicants abovenamed.

(d) A declaration that the decisions of the AAM Committee were exercised prejudicially to the detriment of the four applicants abovenamed and the discretion of the Committee was not exercised judicially and that the AAM Committee is unsuitable to judge the credentials of

nominees nominated for officials of race meets.

The AAM denies all these allegations of bias, malice, vindictiveness, prejudice and *mala fides.* As for acting *ultra vires,* it contends that it has the sole discretion to approve or disapprove applications for the holding of motor race meetings under rule 63 of the National Competition Rules and any decision it makes on any such application is not *ultra vires.* As for the approval of nominations of officials, the AAM contends that its decision to give or withhold its approval under rule 151 of the National Competition Rules is a purely administrative act and is not subject to the operation of the principles of natural justice. Nor is the AAM obliged to give any reason for not approving a motor race meeting or not approving the officials nominated for any race meeting.

The AAM also contends that the ROC had not settled its outstanding fees payable to the AAM on time and that the Director General of the AAM had informed the second applicant that the AAM will not approve the principal officers of the ROC as race officials at future race meetings. The ROC and the applicants particularly were well aware of this.

The application in this case is made under section 41 of the Specific Relief Act 1950 which reads as follows:

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is not entitled, and the plaintiff need not in that suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so."

I am afraid this application cannot be founded under section 41 of the Specific Relief Act. It is wholly misconceived. The ROC and the applicants are in no way entitled to any legal character or to any right as to any property as envisaged in section 41. By applying to the AAM for approval to hold the Johore Grand Prix 1986 and by being nominated by SAMRA to act as officials in the Malaysian Grand Prix 1986, the ROC and the applicants acquired neither of the rights mentioned in section 41.

The next point to consider is whether the AAM was obliged to observe the principles of natural justice in arriving at their decisions which they made under rules 63 and 151 of the National Competition Rules and whether it had to give reasons for its decisions. It may be relevant here to quote Lord Evershed in the case of *Ridge* v. *Baldwin*[1] on the principles of natural justice and on their application:

"It has been said many times that the exact requirements in any case of the so-called principles of natural justice cannot be precisely defined; that they depend in each case upon the circumstances of that case. According to Sir Frederick Pollock, the meaning of the phrase 'natural justice' is 'the ultimate principle' of fitness with regard to the nature of man as a rational 'and social being'; and he went on to point out that the origin of the principles could be traced to Aristotle and the Roman jurists (*Jurisprudence and Legal Essays* (1961) p. 124.). Your Lordships were, therefore, not unnaturally referred to a great many cases, but, as I believe that your Lordships agree, it is by no means easy to treat these decisions as entirely uniform and still less easy to be able to extract from them the means of propounding a precise statement of the circumstances or of the cases in which the principles can be invoked before the courts. I am, however, content to assume that the invocation should not be limited to cases where the body concerned, whether a domestic committee or some body established by a statute, is one which is exercising judicial or quasi-judicial functions strictly so called; but that such invocation may also be had in cases where the body concerned can properly be described as administrative – so long as it can be said, in Sir Fredrick Pollock's language, that the invocation is required in order to conform to the ultimate principle of fitness with regard to the nature of man as a rational and social being.

On the other hand, it is (as I venture to think) no less plain now that Parliament may by appropriate language in a statute make it clear that the activity or discretion of the body constituted by the statute is not to be subject to any control or interference by the courts."

There are two points to consider here. The first is whether the AAM exercises a judicial or a quasi-judicial function under rules 63 and 151 of the National Competition Rules. If it does exercise either of these functions, then the principles of natural justice must be observed by the AAM. My view on this point is that the AAM does not exercise a judicial or quasi-judicial function under rules 63 and 151. The clear, concise and direct wording in these two rules need no second reading. The function of the AAM here is purely administrative.

The next point then arises – whether the administrative or executive function vested in the AAM under the two rules is subject to the application of the principles of natural justice. Here too my view is that there is nothing in the wording of rules 63 and 151 by which the court can imply a

duty on the part of the AAM to observe the principles of natural justice when the AAM makes its decisions under these two rules. The AAM has absolute and unfettered powers under rules 63 and 151 of the National Competition Rules to decide on applications by promoters to hold motor race meetings and to decide whether or not to approve the nominations of officials at race meetings. There is no place here for the application of the principles of natural justice and the AAM is also not obliged to give any reason for its decisions which it may make under rules 63 and 151. The AAM is perfectly entitled to withhold its approval under these two rules for any reason whatsoever, not least of which may well be that some particular promoter or official is no longer in the good books of the AAM.

There is insufficient evidence also to find that the AAM was biased, prejudiced or acted *mala fides* against the applicants. The AAM was no doubt displeased with the ROC officials because the outstanding fees owed by ROC was not being paid on time. The AAM had not hidden its displeasure over this as its Director General had told the second applicant that as the ROC was not paying its dues on time the AAM would not approve the principal officers of the ROC as race officials at future race meetings. And displeasure on this score cannot amount to bias, prejudice or *mala fides*. The decisions which the AAM made in this case were within the scope of the National Competition Rules and they cannot be challenged in a court of law.

The originating summons taken out by the applicants against the respondent is accordingly dismissed with costs.

*Order accordingly.*

Solicitors: *R.K. Nathan; Lovelace & Hastings.*

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## PANG NENG TIONG v. PUBLIC PROSECUTOR

**[A.Cr.J. (Chong Siew Fai J.) July 10, 1987]**

**[Sibu – Criminal Appeal No. 8 of 1987]**

*Criminal Procedure – Charge not framed properly – Penal sections quoted were not appropriate – Penal Code, ss. 393, 397 & 511.*

In this case, the appellant was, on his own plea of guilty, convicted of the offence of attempted robbery. The charge stated that the offence was under section 397 of the Penal Code, read with section 511 of the Penal Code. The appellant appealed against the sentence of two strokes of the rattan.

**Held**, dismissing the appeal: (1) section 511 had no application where there was express provision for punishment for an offence under Penal Code. The appellant therefore should have been charged under section 393 read with section 397 of the Penal Code;

(2) this was a proper case for the charge to be substituted with one under sections 393 and 397 of the Penal Code. However, the conviction was to remain;

(3) there was no ground for contending that the sentence of two strokes of the rattan was manifestly excessive.

*Case referred to:*

(1) *Sivalingam* v. *Public Prosecutor* [1982] 2 M.L.J. 172.

CRIMINAL APPEAL.

Appellant in person.

*Puan Siti Aishah bte Osman* (Deputy Public Prosecutor) for the respondent.

*Cur. Adv. Vult.*

**Chong Siew Fai J.**: In this case, the appellant was, on his own plea of guilty, convicted of the offence charged as follows:

"That you on the 29th day of March 1987, at about 1200 noon at Chop Tian Chen Goldsmith, No. 32, Blacksmith Road, Sibu, did an act, to wit, by threatening Fong Yu Soon (m) with a sickle and demanded money from him, which act amounted to an attempt to rob the said Fong Yu Soon (m) and that you thereby have committed an offence punishable under section 397 of the Penal Code read with section 511 Penal Code."

The charge, in my opinion, is improper. So far as is relevant to the instant case, section 511 of the Penal Code provides:

"Whoever attempts to commit an offence punishable by this Code ... with imprisonment or fine or with a combination of such punishments, ... and in such attempt does any act towards the commission of such offence, shall,